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United States General Accounting Office

Fact Sheet for the Honorable
Wendell H. Ford, U.S. Senate

COMPLETED
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SURFACE MINING

Information on Legal Fees Under the Surface Mining Act





United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-234496

May 9, 1989

The Honorable Wendell H. Ford
United States Senate

Dear Senator Ford:

Your July 28, 1988, letter requested that we conduct a study of attorney and expert witness fees awarded as a result of litigation brought under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 U.S.C. 1201 et seq.). Specifically, you asked that we determine (1) how much money has been awarded, (2) how much has been paid, (3) to whom and when, (4) under what circumstances, and (5) under what authority.

Successful litigants in civil (court) and administrative actions may be reimbursed for their costs and expenses (including attorney and expert witness fees) under either SMCRA or the Equal Access to Justice Act (P.L. 96-481, as amended).

In summary, as of March 24, 1989, a total of about \$1.4 million had been awarded in attorney fees and expenses --about \$1.3 million under SMCRA and about \$124,000 under the Equal Access to Justice Act. We did not find any awards for expert witness fees. All but \$188,603 of the total amount awarded had been paid--\$188,103 was still pending on appeal, and \$500 was not paid as a result of negotiations between the parties involved. (See section 1.)

These payments resulted from 12 lawsuits brought against the Secretary of the Interior, other Interior officials, a state regulatory authority, and a coal mine operator. Multiple awards were granted in five cases; therefore, a total of 22 awards of attorney fees and expenses have been granted. (See section 2.) Of the 22 awards, 12 were granted because the Secretary of the Interior or the appropriate state regulatory authority failed to perform a nondiscretionary act or duty under SMCRA. Six awards resulted from lawsuits challenging Interior's March 1979 permanent surface mining regulations and the Secretary's approval of certain provisions of two state programs under

these regulations. Four awards were granted as a result of administrative proceedings--one involving the Secretary of the Interior's failure to take enforcement action at a Kentucky mine site, two challenging Interior's Office of Surface Mining Reclamation and Enforcement (OSMRE) decisions involving two specific mine operations, and one challenging the Secretary's designation of lands unsuitable for mining.

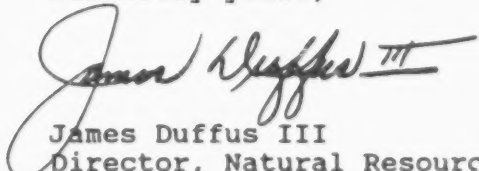
To develop the information included in this fact sheet, we obtained information from Interior's Office of the Solicitor, Division of Financial Management, and Hearings Division; the Department of Justice's Land and Natural Resources Division; the Administrative Office of the U.S. Court's Statistical Analysis and Reports Division; and the Administrative Conference of the United States. Further, we interviewed and obtained information from attorneys who participated in these suits when further clarification or explanation of the information was needed. Interior officials stated that they could not guarantee that all awards of attorney fees that resulted from administrative proceedings had been identified because they do not maintain separate records of such awards.

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As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this fact sheet until 30 days from the date of this letter. At that time, we will send copies to interested parties and make copies available to others upon request. Should you desire further information, please contact me on (202) 275-7756.

Major contributors to this fact sheet are listed in appendix I.

Sincerely yours,


James Duffus III
Director, Natural Resources
Management Issues

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ABBREVIATIONS

OSMRE	Office of Surface Mining Reclamation and Enforcement
SMCRA	Surface Mining Control and Reclamation Act of 1977

SECTION 1

ATTORNEY FEES AND EXPENSES AWARDED AND PAID AS A RESULT OF LITIGATION UNDER SMCRA

Through March 24, 1989, \$1,406,118 had been awarded in attorney fees and expenses--\$1,281,760 under SMCRA and \$124,357 under the Equal Access to Justice Act. Of the total amount awarded, \$1,217,515 had been paid to 16 organizations or individual attorneys. The remaining \$188,603 had not been paid; \$188,103 was still pending on appeal, and \$500 was not paid as a result of negotiations between the parties involved. Table 1.1 summarizes the amounts paid to various organizations and attorneys under the authority of either the Surface Mining Control and Reclamation Act of 1977 (SMCRA) sections 520(d) (30 U.S.C. 1270(d)) and 525(e) (30 U.S.C. 1275(e)) or the Equal Access to Justice Act (28 U.S.C. 2412(d)). Table 1.2 presents the total amount of attorney fees and expenses by litigation and payee (that is, the organization or attorney to whom the check was sent.) Tables 1.3 through 1.5 show how these payments were disbursed to specific organizations and attorneys and the authority under which the award was authorized.

Table 1.1: Summary of Attorney Fees and Expenses Paid

<u>Organizations/attorneys</u>	<u>Attorney fees and expenses</u>	<u>Percent of total</u>
Galloway & Greenberg	\$ 619,310.88	50.9
Yablonski, Both & Edelman	258,615.43	21.2
Tom FitzGerald	64,875.24	5.3
Dow, Lohnes & Albertson	39,409.90	3.2
National Wildlife Federation	33,136.16	2.7
Environmental Defense Fund	30,952.82	2.5
Center for Law and Social Policy	30,547.91	2.5
Morgan & Foley	30,084.58	2.5
Advocates for Public Interest	26,815.65	2.2
Sierra Club Legal Defense Fund, Inc.	20,981.78	1.7
Environmental Policy Institute	19,048.91	1.6
Council of Southern Mountains, Inc.	13,128.34	1.1
Harmon & Weiss	10,485.69	0.9
Onek, Klein & Farr	9,802.00	0.8
L. Gilbert Kendrick	6,640.00	0.5
National Trust for Historic Preservation	<u>3,679.60</u>	<u>0.3</u>
Total	<u>\$1,217,514.89</u>	<u>100.0^a</u>

^aTotal does not add to 100 percent due to rounding.

Table 1.2: Total Attorney Fees and Expenses, by Litigation and Payee

<u>Litigation</u>	<u>Payment authorization date</u>	<u>Payee</u>	<u>Fees and expenses</u>
National Wildlife Federation v. Watt, No. 82-0320 (D.D.C.)	08/10/82	Yablonski, Both & Edelman	\$ 27,640.59
Save Our Cumberland Mountains, Inc. v. Hodel, No 81-2238 (D.D.C.)	06/07/85 04/25/86 01/06/89	Galloway & Greenberg Galloway & Greenberg Galloway & Greenberg Yablonski, Both & Edelman	50,000.00 54,682.61 262,194.11 133,500.00
Save Our Cumberland Mountains, Inc. v. Hodel, No. 81-2134 (D.D.C.)	08/04/86 06/03/88 01/19/89	Galloway & Greenberg Galloway & Greenberg Dow, Lohnes & Albertson	77,124.00 127,743.52 3,956.00
Council of Southern Mountains, Inc. v. Clark, No 79-1521 (D.D.C.)	08/04/80 09/26/85 10/30/85	Center for Law and Social Policy National Wildlife Federation Yablonski, Both & Edelman Galloway & Greenberg Yablonski, Both & Edelman	30,547.91 28,517.58 2,477.74
National Wildlife Federation v. Miller, No. 86-99 (E.D. Ky.)	09/18/87	Galloway & Greenberg Yablonski, Both & Edelman Tom FitzGerald	117,446.99 34,110.00 35,900.00
Council of Southern Mountains v. Clark et. al., No. 83-409 (E.D. Ky.)	09/18/84	Galloway & Greenberg	46,000.00
Utah International, Inc. v. Department of the Interior, No. C-81-0090W (D. Utah); Sierra Club v. Hodel, No. C-81-0172W, (D. Utah)	04/27/87	Environmental Defense Fund Sierra Club Legal Defense Fund, Inc.	30,952.82 9,557.48
Virginia Citizens for Better Reclamation v. OSMRE, IBLA No. 84-838	08/02/85	Environmental Policy Institute	2,838.65
Phipps v. OSMRE, No. NX 4-39-R	11/10/86	Morgan & Foley	8,467.58
Virginia Citizens for Better Reclamation v. Watt, Nos. 83-1828, 85-1075 (4th Cir.)	08/08/84 04/05/85	Environmental Policy Institute Environmental Policy Institute	6,000.00 10,000.00
Citizens for Responsible Resource Development v. Watt, No. 82-530-N (M.D. Ala.)	04/25/84	L. Gilbert Kendrick	6,640.00
In re: Permanent Surface Mining Regulation Litigation, No. 79-1114 (D.D.C.)	02/25/85 02/03/86 12/17/85	Galloway & Greenberg National Wildlife Federation National Wildlife Federation	31,694.10 9,737.57 59,785.64
Total			<u>\$1,217,514.89</u>

Table 1.3: Distribution of Fees and Expenses Awarded Under SMCRA (30 U.S.C. 1270(d)) From Civil Actions

<u>Litigation</u>	<u>Distribution of attorney fees and expenses</u>		
	<u>Organization/attorney</u>	<u>Fees and expenses</u>	<u>Total</u>
National Wildlife Federation v. Watt, No. 82-0320 (D.D.C.)	Yablonski, Both & Edelman	\$ 27,640.59 ^a	\$ 27,640.59
Save Our Cumberland Mountains, Inc. v. Hodel, No. 81-2238 (D.D.C.)	Galloway & Greenberg	25,781.75	50,000.00
	Yablonski, Both & Edelman	24,218.25	
	Galloway & Greenberg	37,709.96	64,682.61
	Harmon & Weiss	1,910.48	
	Yablonski, Both & Edelman	25,032.17	
	National Wildlife Federation	3,000.00	262,194.11
	Tom FitzGerald	15,688.75	
	Galloway & Greenberg	221,478.34	
	Harmon & Weiss	1,996.02	
	Morgan & Foley	20,031.00	
	Yablonski, Both & Edelman	133,500.00	133,500.00
Save Our Cumberland Mountains, Inc. v. Hodel, No. 81-2134 (D.D.C.)	Galloway & Greenberg	37,859.00	77,124.00
	Advocates for Public Interest Council of Southern Mountains, Inc.	14,708.00	
	Dow, Lohnes & Albertson	1,288.00	127,743.52
	Tom FitzGerald	20,392.00	
	Harmon & Weiss	517.00	
		2,360.00	
	Galloway & Greenberg	83,411.13	
	Advocates for Public Interest Council of Southern Mountains, Inc.	12,107.65	
	Dow, Lohnes & Albertson	10,675.34	
	Tom FitzGerald	15,061.90	
Council of Southern Mountains, Inc. v. Clark, No. 79-1521 (D.D.C.)	Harmon & Weiss	2,298.31	30,547.91
		4,189.19	
	Dow, Lohnes & Albertson	3,956.00	28,517.58
	Center for Law and Social Policy	30,547.91 ^a	
	National Wildlife Federation	3,940.00	
	Yablonski, Both & Edelman	10,227.02	
National Wildlife Federation v. Miller, No. 86-99 (E.D. Ky.)	Galloway & Greenberg	14,350.56	2,477.74
	Yablonski, Both & Edelman	2,477.74	
	Galloway & Greenberg	115,699.58	187,456.99
	Yablonski, Both & Edelman	35,519.66	
	Tom FitzGerald	36,237.75	
Total		\$ 995,841.05	\$ 995,841.05

^aFigures were not available to show distribution beyond the initial payee. Figures shown are total amounts awarded.

Table 1.4: Distribution of Fees and Expenses Awarded Under SMCRA (30 U.S.C. 1275(e)) From Administrative Proceedings

<u>Litigation</u>	<u>Distribution of attorney fees and expenses</u>		
	<u>Organization/attorney</u>	<u>Fees and expenses</u>	<u>Total</u>
Council of Southern Mountains v. Clark et. al., No. 83-409 (E.D. Ky.)	Galloway & Greenberg	\$ 33,447.00	
	Council of Southern Mountains, Inc.	1,165.00	
	Morgan & Foley	1,586.00	
	Onek, Klein & Farr	9,802.00	\$ 46,000.00
Utah International, Inc. v. Department of the Interior, No. C-81-0090W (D. Utah); Sierra Club v. Hodel, No. C-81-0172W, (D. Utah)	Environmental Defense Fund	30,352.82	
	Sierra Club Legal Defense Fund, Inc.	9,557.48	40,510.30
Virginia Citizens for Better Reclamation v. OSMRE, IBIA No. 84-838	Environmental Policy Institute	2,838.65	2,838.65
Phipps v. OSMRE, No. NX 4-39-R	Morgan & Foley	8,467.58	8,467.58
Total		\$ 97,816.53	\$ 97,816.53

Table 1.5: Distribution of Fees and Expenses Awarded Under the Equal Access to Justice Act (28 U.S.C. 2412(d))

<u>Litigation</u>	<u>Distribution of attorney fees and expenses</u>		
	<u>Organization/attorney</u>	<u>Fees and expenses</u>	<u>Total</u>
Virginia Citizens for Better Reclamation v. Watt, Nos. 83-1828, 85-1075 (4th Cir.)	Environmental Policy Institute	\$ 6,000.00	
	Environmental Policy Institute	10,000.00	\$ 16,000.00
Citizens for Responsible Resource Development v. Watt, No. 82-530-W (M.D. Ala.)	L. Gilbert Kendrick	6,640.00	6,640.00
In re: Permanent Surface Mining Regulation Litigation, No. 79-1114 (D.D.C.)	Galloway & Greenberg	19,745.56	
	Tom FitzGerald	2,302.90	
	National Wildlife Federation	9,645.64	31,694.10
	National Wildlife Federation	5,441.44	
	Galloway & Greenberg	3,713.83	
	Tom FitzGerald	582.30	9,737.57
	Galloway & Greenberg	26,114.17	
	Sierra Club Legal Defense Fund, Inc.	11,424.30	
	Environmental Policy Institute	210.26	
	Tom FitzGerald	7,248.23	
	National Trust for Historic Preservation	3,679.60	
	National Wildlife Federation	11,109.08	59,783.64
Total		\$ 123,857.31	\$123,857.31

SECTION 2

CASES WHERE AN AWARD OF ATTORNEY FEES AND EXPENSES WAS GRANTED

To be eligible for the recovery of attorney fees as a result of litigation, the attorney or organization must submit an application to a federal district court for civil actions or Interior's Board of Land Appeals for administrative proceedings. The fee application must show the amount of attorney fees and expenses for which an award is sought.

The federal judge in civil actions, or the administrative law judge in administrative proceedings, determines whether the petitioning party has achieved some degree of success on any significant issue in the litigation and thus is entitled to an award. Once entitlement has been established, a three-part analysis is used to determine the appropriate award: (1) the number of hours expended by the prevailing attorney; (2) a reasonable hourly rate for the attorney; and (3) an adjustment of the total fee by the court either upward or downward. This adjustment may occur for several reasons, including the novelty and difficulty of the questions involved and the results achieved.

We identified 22 instances where an award of attorney fees and expenses was granted as a result of litigation brought under SMCRA. The circumstances, amounts awarded and paid, and the authority under which the award was granted for each of these cases are summarized below.

National Wildlife Federation v. Watt (No. 82-0320 (D.D.C.))

On February 3, 1982, the National Wildlife Federation and five of its state affiliates sued the Secretary of the Interior, the Office of Surface Mining Reclamation and Enforcement (OSMRE) Director, and the Department of the Interior because of the Secretary's decision to revise the federal surface mining regulatory program without first preparing an environmental impact statement that considered the environmental implications of the proposed revision. This suit was settled with the National Wildlife Federation's gaining Interior's commitment to prepare an environmental impact statement.

On May 28, 1982, the National Wildlife Federation filed an Application for an Award of Fees and Expenses under SMCRA section 520(d). The case was settled with Interior's agreeing to pay the Federation \$27,250 in attorney fees and \$390.59 in expenses, for a total of \$27,640.59. On July 15, 1982, the U.S. District Court for the District of Columbia approved this agreement.

Save Our Cumberland Mountains, Inc. v. Hodel
(No. 81-2238 (D.D.C.))

On September 15, 1981, Save Our Cumberland Mountains, Inc. brought suit against Interior in an effort to curb what it contended was the widespread avoidance of the environmental protection set forth in SMCRA through the misuse and abuse of the "two-acre" exemption to SMCRA.¹ The suit was settled on June 7, 1985. As a result, Interior agreed to develop a nationwide plan to curb the abuses that had been identified by establishing a timetable for identifying 2-acre sites, and subsequently inspecting sites and enforcing action against larger sites. Interior also agreed to pay Save Our Cumberland Mountains, Inc. \$50,000 as compensation for developing an inventory of 2-acre sites in Kentucky and Virginia.

On July 25, 1985, the U.S. District Court for the District of Columbia held that Save Our Cumberland Mountains, Inc. was entitled to an award of attorney fees and expenses. Interior appealed all but \$64,682.61 of the amount awarded, contesting the reasonableness of the hourly rates, the reasonableness of the number of hours, the propriety of adjustments used in computing the ultimate fee award, and the award of certain expenses. On March 3, 1986, the U.S. Court of Appeals for the District of Columbia Circuit awarded the uncontested attorney fees and expenses to Save Our Cumberland Mountains, Inc..

As a result of Interior's appeal, the U.S. Court of Appeals for the District of Columbia Circuit, on August 7, 1987, reduced the July 25, 1985, award. Save Our Cumberland Mountains, Inc. filed a petition for rehearing, and on September 16, 1988, the U.S. Court of Appeals determined that the hourly rate for two of Save Our Cumberland Mountains' attorneys had been improperly computed and ordered a recalculation of that rate.

After the attorney fees issue was decided by the U.S. Court of Appeals, settlement discussions were initiated that culminated in a December 20, 1988, judgment by the U.S. District Court for the District of Columbia that awarded the sum of \$395,694.11 in attorney fees and expenses to Save Our Cumberland Mountains, Inc.

A total of \$510,376.72 in attorney fees and expenses, including the cost of developing the inventory, was paid as a result of this suit. All awards in this case were authorized under SMCRA, section 520(d).

¹Under SMCRA, section 528(2), if a surface coal mining operation affects 2 acres or less, it is not subject to the act.

Save Our Cumberland Mountains, Inc. v. Hodel
(No. 81-2134 (D.D.C.))

On September 8, 1981, Save Our Cumberland Mountains, Inc. filed suit, claiming that Interior officials had failed to assess and collect mandatory civil penalties against mine operators cited for violating SMCRA. The organization further asserted that the Secretary had violated his own mandatory regulation by failing to initiate enforcement actions in a timely manner against mine operators who continued to violate the act. On January 31, 1985, Save Our Cumberland Mountains, Inc. and Interior consented to an order requiring Interior to assess and collect civil penalties and take alternative enforcement actions against violators of SMCRA.

In an April 1, 1985, fee petition, Save Our Cumberland Mountains, Inc. requested attorney fees and expenses covering all work done in the case up to January 31, 1985. On August 4, 1986, the U.S. District Court for the District of Columbia awarded Save Our Cumberland Mountains, Inc. \$77,124 in attorney fees not contested by Interior. On December 23, 1986, the U.S. District Court for the District of Columbia, granted a total award of \$392,970.19 in attorney fees and expenses, including the \$77,124.

On February 19, 1987, Interior filed an appeal with the U.S. Court of Appeals for the District of Columbia Circuit contending that (1) the District Court, in awarding attorney fees under section 520(d) of SMCRA, abused its discretion in awarding "prevailing community rates" to attorneys who had customary billing rates of nearly one-third less than the awarded rate, and that the court improperly based such rates on the fees charged by major Washington, D.C., law firms; (2) the District Court abused its discretion in finding that plaintiffs had reasonably expended 805 hours on appeal and preparation of fee petitions; and (3) the District Court erred in granting a 10-percent multiplier to the award of attorney fees. On January 22, 1988, the U.S. Court of Appeals for the District of Columbia Circuit awarded an interim award of \$127,743.52 for attorney fees and expenses for a total award of \$204,867.52. As of March 24, 1989, the remaining \$188,102.67 was still under appeal.

On December 12, 1988, Save Our Cumberland Mountains, Inc. filed a motion for the award of attorney fees for its efforts in responding to Interior's discovery motions and in obtaining responses to its discovery requests. On January 19, 1989, the U.S. District Court for the District of Columbia granted Save Our Cumberland Mountains, Inc. the sum of \$3,956 for attorney fees.

Of the \$396,926.19 awarded under SMCRA, section 520(d), \$208,823.52 has been paid. As of March 24, 1989, the remaining \$188,102.67 was still under appeal.

Council of Southern Mountains, Inc. v. Clark
(No. 79-1521 (D.D.C.))

On June 12, 1979, the Council of Southern Mountains, Inc. filed suit alleging that the Secretary of the Interior had failed to assess individual civil penalties against corporate officials who willfully and knowingly participated in the commission of violations. The suit was settled on March 31, 1980, by an agreement between the two parties that, in part, (1) required the Secretary to establish procedures within 30 days to determine when sanctions under SMCRA section 518(f) should be assessed;² (2) required these procedures to include, but not be limited to, a review of all future Failure to Abate Cessation Orders and a written determination, within a specified time, as to whether such sanctions are appropriate; and (3) provided that Interior pay the Council \$30,547.91 for expenses (including attorney fees). The U.S. District Court for the District of Columbia approved the award on July 2, 1980.

On September 7, 1983, the Council filed a "Motion To Reopen This Proceeding And To Compel Compliance With Settlement Agreement." The Council charged that, while over 2,000 cessation orders and many serious notices of violations requiring written determinations had been issued between March 1980 and May 1983, Interior was able to supply them with only 23 written determinations. On January 30, 1984, the U.S. District Court for the District of Columbia entered an injunction requiring the Secretary, within 30 days, to make written determinations for all of the remaining cessation orders.

In April 1984, the Council sought attorney fees and other expenses arising from work performed on the issue of noncompliance with the March 31, 1980, settlement agreement. On September 26, 1985, the U.S. District Court for the District of Columbia awarded \$28,112.50 in attorney fees and \$405.08 in expenses to the Council.

²Section 518(f) states, "Whenever a corporate permittee violates a condition of a permit issued pursuant to a Federal program, a Federal lands program or Federal enforcement pursuant to section 502 or Federal enforcement of a State program pursuant to section 521 of this Act or fails or refuses to comply with any order issued under section 521 of this Act, or any order incorporated in a final decision issued by the Secretary under this Act except an order incorporated in a decision issued under subsection (b) of this section or section 703 of this Act, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (e) of this section."

The Council filed a supplemental application for attorney fees and expenses incurred in preparing its April 1984 fees application. On October 30, 1985, the U.S. District Court for the District of Columbia granted the Council's supplemental application for \$2,365.00 in attorney fees and \$112.74 in expenses.

A total of \$61,543.23 in attorney fees and expenses was paid as a result of this suit. All awards in this case were authorized under SMCRA, section 520(d).

National Wildlife Federation v. Miller
(No. 86-99 (E.D. Ky.))

The National Wildlife Federation filed suit alleging a systemic breakdown of the Kentucky surface mining regulatory authority's ability to perform its mandatory duties under SMCRA. On September 18, 1987, the U.S. District Court for the Eastern District of Kentucky, Frankfort Division, approved a settlement agreement between the parties. Kentucky's Secretary of Natural Resources and Environmental Protection Cabinet and its Commissioner of Surface Mining agreed to develop an inventory of non-permitted and/or non-bonded surface coal mining and reclamation operations subject to the provisions of SMCRA. They also agreed to inspect these sites, assess penalties, initiate bond forfeiture proceedings, and take enforcement actions for violations found on any site inspected.

A total of \$187,456.99--\$181,071.25 in attorney fees and \$6,385.74 in expenses--was paid as a result of this suit. The fees and expenses were awarded under the authority of SMCRA, section 520(d).

Council of Southern Mountains v. Clark, et. al.
(No. 83-409 (E.D. Ky.))

The suit alleged that the Secretary of the Interior failed to take the required enforcement action for violations existing at a surface mine site located in Knott County, Kentucky, operated by the Highland Coal Company. As a result of an agreement between the parties, on June 13, 1984, the U. S. District Court for the Eastern District of Kentucky, Pikeville, awarded \$46,000 in attorney fees and expenses to the Council of Southern Mountains, Inc. under SMCRA, section 525(e).

Utah International, Inc. v. Department of the Interior
(No. C-81-0090W (D. Utah)); Sierra Club v. Hodel,
(No. C-81-0172W (D. Utah))

On November 28, 1979, the Environmental Defense Fund and the Sierra Club, along with other groups and individuals, filed a petition with OSMRE and Interior requesting that certain lands abutting Bryce Canyon National Park and Dixie National Forest be

designated unsuitable for surface coal mining operations. In December 1980, the Secretary of the Interior issued a decision designating an area east and south of Bryce Canyon National Park as unsuitable for surface coal mining operations.

On February 9, 1987, the U.S. District Court for the District of Utah, Central Division, granted the motions of the Environmental Defense Fund and the Sierra Club for an award of attorney fees and expenses from the United States. The court awarded the Environmental Defense Fund attorney fees of \$30,952.82, and the Sierra Club attorney fees of \$8,979.25 and \$578.23 in expenses under SMCRA, section 525(e). In total, \$40,510.30, in attorney fees and expenses, was paid as a result of this suit.

Virginia Citizens for Better Reclamation v. OSMRE
(IBLA No. 84-838)

On March 16, 1983, Virginia Citizens for Better Reclamation filed a complaint against the Moose Coal Company, asserting that the company was conducting mining operations without a valid permit. OSMRE's field office director denied the complaint for enforcement action against the company. Virginia Citizens for Better Reclamation appealed this decision to Interior's Board of Land Appeals.

After reviewing the matter, the Board of Land Appeals concluded

"that Moose Coal had not filed a materially complete application for a permanent program permit with [Virginia Department of Mined Land Reclamation] on August 15, 1982, and, therefore, that its mining operations after that date, were conducted without a valid permit."

In reversing OSMRE, the Board directed the agency to issue a cessation order to the Moose Coal Company because it had mined without a permit and to assess a civil penalty. Furthermore, the Board directed OSMRE to ensure that the company's reclamation operations met the performance standards of Virginia's permanent surface mining regulations and were covered by a bond calculated in accordance with those regulations.

On August 2, 1985, Interior's Board of Land Appeals awarded Virginia Citizens for Better Reclamation \$2,793 for attorney fees and \$45.65 for expenses under SMCRA, section 525(e).

A total of \$2,838.65, in attorney fees and expenses, was paid as a result of this suit.

Phipps v. OSMRE (No. NX 4-39-R)

On March 1, 1984, Mr. A. L. Phipps notified OSMRE that AM-LE-CO, Inc. was operating illegally within 300 feet of an occupied dwelling without his approval. OSMRE issued a 10-day notice to the Kentucky Department of Surface Mining Reclamation and Enforcement. State inspectors inspected the AM-LE-CO, Inc. mine site and concluded that the allegations were invalid.

On March 17, 1984, Mr. Phipps appealed to OSMRE, claiming that the state regulatory authority failed to take adequate enforcement action relative to the mine site. As a result, an OSMRE inspector investigated the AM-LE-CO, Inc. mine site. The OSMRE inspector issued a notice of violation, citing AM-LE-CO, Inc. for disturbing an area within 300 feet of Mr. Phipps' house. However, since all remedial measures had already been taken by the company, (that is, disturbed areas had been regraded, seeded, and mulched) the OSMRE inspector terminated the notice of violation.

The OSMRE inspector also made a separate determination as to whether to include another house within the notice of violation. This house, also owned by Mr. Phipps, was within 60 feet of the mined area. The OSMRE inspector determined that the house was not an occupied dwelling; therefore, it was not a part of the notice of violation.

On May 9, 1984, Mr. Phipps and his family filed an application for review of the notice of violation with Interior's Office of Hearings and Appeals. The application for review was filed to contest the accuracy of the occupancy determination and to request that the notice of violation be modified to include the house located within 60 feet of the mined area. On July 24, 1986, Interior's Office of Hearings and Appeals concluded that the house was an occupied dwelling when the permittee mined within 300 feet of this property and ordered that it be included in the notice of violation.

On November 10, 1986, Interior's Office of Hearings and Appeals found that Mr. Phipps and his family were entitled to recover \$4,964 in attorney fees and \$34.79 in expenses from AM-LE-CO, Inc., and \$3,434 in attorney fees and \$34.79 in expenses from OSMRE under the authority of SMCRA, section 525(e).

A total of \$8,467.58, in attorney fees and expenses, was paid as a result of this suit.

Virginia Citizens for Better Reclamation v. Watt
(Nos. 83-1828, 85-1075 (4th Cir.))

Virginia Citizens for Better Reclamation filed suit alleging that the Secretary of the Interior had acted arbitrarily and capriciously in approving certain provisions of Virginia's

permanent surface mining program. Nineteen claims of alleged deficiencies in the Secretary of the Interior's decision approving Virginia's program were raised by Virginia Citizens for Better Reclamation.

On June 6, 1984, the U.S. Court of Appeals for the Fourth Circuit ruled in favor of Virginia Citizens for Better Reclamation. It found that the Secretary had failed to require Virginia to (1) assure that coal operators protect all groundwater that is adversely affected by coal mining operations; (2) limit approval of cross-examination at hearings for designating lands unsuitable for mining to experts; (3) assure that operators list special orders in their permit applications; and (4) conduct monthly inspections of abandoned mines and quarterly inspections of inactive mines.

On August 27, 1984, the U.S. Court of Appeals approved a Stipulation of Settlement between Virginia Citizens for Better Reclamation and the Secretary of the Interior. Under the agreement, the Secretary agreed to pay \$6,000 in settlement of the Virginia Citizens for Better Reclamation's claims for appellate attorney fees and expenses. In September 1984, Virginia Citizens for Better Reclamation petitioned the U.S. District Court for the Eastern District of Virginia, Richmond Division, for that portion of costs and attorney fees incurred in conjunction with the presentation of the four issues upon which it ultimately prevailed. The District Court denied the request for attorney fees and costs. This decision was appealed, but the parties agreed to dismiss the appeal. In exchange for dismissal, Interior agreed to pay \$10,000 in full settlement of the Virginia Citizens for Better Reclamation's claims for attorney fees and costs.

A total of \$16,000 in attorney fees and expenses was paid as a result of this suit. Both awards in this case were authorized under the Equal Access to Justice Act.

Citizens for Responsible Resource Development v. Watt
(No. 82-530-N (M.D. Ala.))

Citizens for Responsible Resource Development filed suit challenging the Secretary of the Interior's decision to approve Alabama's program for the regulation of surface coal mining and reclamation operations. The suit alleged that the Secretary's decision was arbitrary, capricious, and inconsistent with law.

On October 7, 1983, the U.S. District Court for the Middle District of Alabama held that

"the approval of the regulations permitting partial bond release prior to top soil replacement, permitting weekly inspections during a period when the permittee is without bond coverage and authorizing the Alabama Surface

Mining Commission as the only agency which could ultimately approve a variance from approximate original contour was invalid."

On January 11, 1984, Citizens for Responsible Resource Development was awarded attorney fees of \$7,140 under the authority of the Equal Access to Justice Act. This award was appealed and later dismissed by agreement between the parties. Negotiations with the Citizens for Responsible Resource Development's attorney resulted in a \$500 deduction from the \$7,140 award, resulting in a payment of \$6,640.

In Re: Permanent Surface Mining Regulation Litigation
(No. 79-1144 (D.D.C.))

Citizen and environmental organizations (hereinafter "plaintiffs") filed suit to challenge the validity of the Secretary of the Interior's permanent program regulations promulgated by OSMRE in March 1979. Various issues were raised by the litigants with regard to the regulations promulgated by the Secretary. The court considered these issues in three phases.

In the first phase, plaintiffs filed a complaint challenging 44 regulations promulgated by the Secretary as part of his regulatory reform of OSMRE, including bonding, subsidence, prime farmland, fish and wildlife, topsoil, alluvial valley floors, and backfilling and grading. On October 1, 1984, the U.S. District Court for the District of Columbia upheld 22 of the plaintiffs' challenges. The District Court found the Secretary's regulations to be arbitrary and capricious, contrary to law, and contrary to the intent of the Congress.

On October 31, 1984, the plaintiffs filed an application for an award of attorney fees and expenses for the first phase of the litigation. In a February 21, 1985, settlement between the parties, the Secretary of the Interior agreed to pay plaintiffs \$28,050 in attorney fees plus \$3,644.10 in expenses. In a February 25, 1985, order, the U.S. District Court for the District of Columbia awarded these attorney fees and expenses.

During the second phase, plaintiffs filed a suit on July 16, 1984, challenging the Secretary of the Interior's new, permanent program surface mining regulations on valid existing rights. In a March 22, 1985, order, the U.S. District Court for the District of Columbia struck down the valid existing rights regulations because the Secretary failed to provide adequate notice and an opportunity for public comment, and remanded the regulations to the Secretary for revision. On April 19, 1985, plaintiffs filed a petition for an award of attorney fees and expenses related to the valid existing rights issue. On August 1, 1985, the U.S. District Court for the District of Columbia ordered that the plaintiffs be awarded attorney fees of \$9,393.73 and expenses of \$343.84. On August 22,

1985, the plaintiffs filed a petition for an award of attorney fees and expenses for the issues raised in the third phase concerning lands unsuitable for surface coal mining operations under SMCRA. On October 30, 1985, the parties settled for \$59,785.64 in attorney fees and expenses. On November 5, 1985, the U.S. District Court for the District of Columbia issued a judgment against Interior for this amount.

A total of \$101,217.31, in attorney fees and expenses, was paid as a result of this suit. All awards in this case were authorized under the Equal Access to Justice Act.

MAJOR CONTRIBUTORS TO THIS FACT SHEET

Resources, Community, and Economic Development Division,
Washington, D.C.

James Duffus III, Director, Natural Resources
Management Issues (202) 275-7756
Bob Robinson, Assistant Director
Edward E. Young, Evaluator-in-Charge
David Gleason, Evaluator

(140320)

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